

Executive Summary

The Executive Summary is a summation of this agreement and is not intended to be used as the agreement between the Department (North Carolina Department of Transportation) and the Party (Entity).

Entity: City of Durham

County: Durham

TIP / WBS Element:

TIP: U-0071

Scope: The Project consists of roadway improvements along the East End Connector from north of NC 98 to NC 147 (Buck Dean Freeway) in Durham County.

Funding:

Type: Receivable

Funding for: Betterment

Responsibilities:

The Department shall be responsible for all aspects of the project.

Utilities *Note which Party is responsible for utilities denoted as True.*

Municipality is over 5,500: True If True, Municipality is Responsible

Cost of Relocation: \$1,140,997

Sidewalks *Note: If data does not appear in any of the Sidewalk fields below, then, the project does not include sidewalks.*

Reimbursement to Department: 100%

Department Participation: 0%

Estimated Cost: \$246,675

Estimated Cost to Municipality: \$246,675

Maintenance: Upon completion of the project, excluding the sidewalks, the Department shall be responsible for maintenance. The City of Durham shall be responsible for sidewalks maintenance and liability.

NORTH CAROLINA

**TRANSPORTATION IMPROVEMENT PROJECT –
MUNICIPAL AGREEMENT**

DURHAM COUNTY

DATE: 01/30/2014

NORTH CAROLINA DEPARTMENT OF
TRANSPORTATION

TIP #: U-0071

AND

CITY OF DURHAM

THIS MUNICIPAL AGREEMENT is made and entered into on the last date executed below, by and between the North Carolina Department of Transportation, an agency of the State of North Carolina, hereinafter referred to as the “Department” and the City of Durham, a local government entity, hereinafter referred to as the “Municipality”.

W I T N E S S E T H:

WHEREAS, the Department has plans to make certain street and highway constructions and improvements within the Municipality under Project U-0071, in Durham County; and,

WHEREAS, the Department and the Municipality have agreed that the municipal limits, as of the date of the awarding of the contract for the construction of the above-mentioned project, are to be used in determining the duties, responsibilities, rights and legal obligations of the parties hereto for the purposes of this Agreement; and,

WHEREAS, this Agreement is made under the authority granted to the Department by the North Carolina General Assembly, including but not limited to, the following legislation: General Statutes of North Carolina, Section 136-66.1, Section 160A-296 and 297, Section 136-18, and Section 20-169, to participate in the planning and construction of a Project approved by the Board of Transportation for the safe and efficient utilization of transportation systems for the public good; and,

WHEREAS, the parties to this Agreement have approved the construction of said Project with cost participation and responsibilities for the Project as hereinafter set out.

NOW, THEREFORE, the parties hereto, each in consideration of the promises and undertakings of the other as herein provided, do hereby covenant and agree, each with the other, as follows:

SCOPE OF THE PROJECT

1. The Project consists of roadway improvements along the East End Connector from north of NC 98 to NC 147 (Buck Dean Freeway) in Durham County.

PLANNING, DESIGN AND RIGHT OF WAY

2. The Department shall prepare the environmental and/or planning document, and obtain any environmental permits needed to construct the Project, and prepare the Project plans and specifications needed to construct the Project. All work shall be done in accordance with departmental standards, specifications, policies and procedures.
3. The Department shall be responsible for acquiring any needed right of way required for the Project. Acquisition of right of way shall be accomplished in accordance with the policies and procedures set forth in the North Carolina Right of Way Manual.

UTILITIES

4. The Municipality, without any cost or liability whatsoever to the Department, shall relocate and adjust all municipally-owned utilities in conflict with the Project and shall exercise any rights which it may have under any franchise to and relocations of telephone, telegraph, and electric power lines; underground cables, gas lines, and other pipelines or conduits; or any privately- or publicly-owned utilities.
 - B. Said work shall be performed in a manner satisfactory to the Department prior to the Department beginning construction of the Project. The Municipality shall make every effort to promptly relocate said utilities in order that the Department will not be delayed in the construction of the Project.
 - C. The Municipality shall make all necessary adjustments to house or lot connections or services lying within the right of way or construction limits, whichever is greater, of the Project.
 - D. The Department, where necessitated by construction, will make vertical adjustments of two (2) feet or less to the existing manholes, meter boxes, and valve boxes at no expense to the Municipality.

- E. If applicable, the Department shall reimburse the Municipality in accordance with the Municipally Owned Utility Policy of the Department approved by the Board of Transportation.
- F. If the Municipality requests the Department to include the relocation and/or adjustment of municipally owned utilities in its construction contract provisions, the Municipality shall reimburse the Department all costs associated with said relocation. The current estimated cost of this relocation is \$1,140,997 (estimate based on preliminary plans). Reimbursement will be based on final project plans and actual costs of relocation. If a request is received from the Municipality, a separate Utility Agreement will be prepared to determine the reimbursement terms and an updated cost estimate.

CONSTRUCTION AND MAINTENANCE

- 5. The Department shall construct, or cause to be constructed, the Project in accordance with the plans and specifications of said Project as filed with, and approved by, the Department. The Department shall administer the construction contract for said Project.
- 6. It is further agreed that upon completion of the Project, the Department shall be responsible for all traffic operating controls and devices which shall be established, enforced, and installed and maintained in accordance with the North Carolina General Statutes, the latest edition of the Manual on Uniform Traffic Control Devices for Streets and Highways, the latest edition of the "Policy on Street and Driveway Access to North Carolina Highways", and departmental criteria.
- 7. Upon completion of the Project, the improvement(s) shall be a part of the State Highway System and owned and maintained by the Department.

BETTERMENTS

- 8. The Municipality shall participate in the Betterment costs of the Project as follows:
 - A. Upon completion of the work, the Municipality shall reimburse the Department one hundred percent (100%), of the actual cost, including administrative costs, of the work associated with the construction of the sidewalks. The estimated cost of the sidewalks is \$246,675. The estimated cost to the Municipality is \$246,675. Furthermore, upon completion of the work, the Municipality shall reimburse the Department one hundred percent (100%) of the actual cost, including administrative costs, of the work associated with the vinyl coating to the chain link fence, the conduit for future lighting, the mast arms and the illuminated pedestrian crosswalk push buttons. The estimated cost of the vinyl

coating is \$2,012. The estimated cost of the conduit for future lighting is \$12,362. The estimated cost of the mast arms and illuminated pedestrian crosswalk push buttons is \$35,938. The total estimated cost to the Municipality is \$296,987. Both parties understand that this is an estimated cost and is subject to change.

- B. The Municipality is requesting approval from the Transportation Advisory Committee (TAC) to allocate 80% from the Durham Metropolitan Planning Organization (MPO) State Transportation Program Direct Attributable (STP-DA) funds allocation for their 100% portion of the project. Based on the approval from the TAC, this Agreement will approve the option for funding provided by STP-DA funds with written notification from the Municipality to the Division Engineer.
- C. Upon approval from the Durham MPO, the Department shall initially authorize \$296,987 from the MPO's STP-DA funds allocation, on behalf of the Municipality.
- D. The Municipality shall be responsible for funding 20% (\$59,397.40) matching funds of their 80% (\$237,589.60) Direct Attributable funds authorized. The Municipality shall be responsible for funding all costs that exceed \$296,987 and all costs not reimbursed by the Federal Highway Administration due to non-compliance by the Municipality.
- E. Upon completion, the Department will bill the Municipality for their 20% match to STP-DA, plus any cost over the total estimated cost, unless the MPO approves an additional allocation.

Fund Source	Funding	
Municipality	\$237,589.60 (80% STPDA)	\$59,397.40 (20% Local)
Total Estimated Cost	\$296,987	

- F. If the Durham MPO and the Municipality elect to authorize additional allocations for this project from the Durham MPO, written notification shall be sent to the Program Development Branch for approval ninety (90) days prior to completion of the project and the Department shall make additional authorizations consistent with such allocations. Any un-used STP-DA Funds shall revert back to the Durham MPO.
- G. Reimbursement to the Department shall be made in one final payment upon completion of the work and within sixty days of invoicing by the Department.

- H. In the event the Municipality fails for any reason to pay the Department in accordance with the provisions for payment herein above provided, North Carolina General Statute 136-41.3 authorizes the Department to withhold so much of the Municipality's share of funds allocated to said Municipality by the General Statutes of North Carolina, Section 136-41.1 until such time as the Department has received payment in full under the reimbursement terms set forth in this Agreement. A late payment penalty and interest shall be charged on any unpaid balance due in accordance with G.S. 147-86.23.

ADDITIONAL PROVISIONS

9. At the request of the Municipality, and in accordance with the Department's "Guidelines for Planning Pedestrian Facilities", the Department shall include provisions in its construction contract for the construction of sidewalks on/or along the east end connector from north of NC 98 to NC 147 (Buck Dean Freeway) in Durham County. Said work shall be performed in accordance with Departmental policies, procedures, standards and specifications, and the following provisions.
- A. It is understood by both parties that all sidewalk work shall be performed within the existing right of way. However, should it become necessary, the Municipality, at no expense or liability whatsoever to the Department, shall provide any needed right of way and or construction easements for the construction of the sidewalks, and remove from said rights of way all obstructions and encroachments of any kind or character. Acquisition of any needed right of way shall be performed in accordance with the following state and federal policies and procedures, "Right of Way Acquisition Policy and Land Acquisition Policy, contained in the Federal-Aid Policy Guide, Part 712, Subpart B", and the North Carolina Right of Way Manual (Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970). The Department shall be indemnified and held harmless from any and all damages and claims for damages associated with the acquisition of any construction easements and/or right of way.
 - B. Upon completion of the work, the Municipality shall reimburse the Department in accordance with Provision #8 stated hereinabove.
 - C. The Municipality, at no expense to the Department, shall assume all maintenance responsibilities for the sidewalks and release the Department from all liability relating to such maintenance.
10. It is the policy of the Department not to enter into any agreement with another party that has been debarred by any government agency (Federal or State). The Municipality certifies, by signature

of this agreement, that neither it nor its agents or contractors are presently debarred, suspended, proposed for debarment, declared ineligible or voluntarily excluded from participation in this transaction by any Federal or State Department or Agency.

11. To the extent authorized by state and federal claims statutes, each party shall be responsible for its respective actions under the terms of this agreement and save harmless the other party from any claims arising as a result of such actions.
12. Each of the parties covenants that if it enters into any subcontracts in order to perform any of its obligations under this contract, it shall require that the contractors and their subcontractors comply with the requirements of NC Gen. Stat. Article 2 of Chapter 64. In this E-Verify Compliance section, the words contractors, subcontractors, and comply shall have the meanings intended by N.C. Gen. Stat. § 160A-20.1.
13. All terms of this Agreement are subject to available departmental funding and fiscal constraints.
14. By Executive Order 24, issued by Governor Perdue, and N.C. G.S. § 133-32, it is unlawful for any vendor or contractor (i.e. architect, bidder, contractor, construction manager, design professional, engineer, landlord, offeror, seller, subcontractor, supplier, or vendor), to make gifts or to give favors to any State employee of the Governor's Cabinet Agencies (i.e., Administration, Commerce, Correction, Crime Control and Public Safety, Cultural Resources, Environment and Natural Resources, Health and Human Services, Juvenile Justice and Delinquency Prevention, Revenue, Transportation, and the Office of the Governor).

IT IS UNDERSTOOD AND AGREED upon that the approval of the Project by the Department is subject to the conditions of this Agreement.

IN WITNESS WHEREOF, this Agreement has been executed, in duplicate, the day and year heretofore set out, on the part of the Department and the Municipality by authority duly given.

L.S. ATTEST: CITY OF DURHAM

BY: _____ BY: _____

TITLE: _____ TITLE: _____

DATE: _____ DATE: _____

N.C.G.S. § 133-32 and Executive Order 24 prohibit the offer to, or acceptance by, any State Employee of any gift from anyone with a contract with the State, or from any person seeking to do business with the State. By execution of any response in this procurement, you attest, for your entire organization and its employees or agents, that you are not aware that any such gift has been offered, accepted, or promised by any employees of your organization.

Approved by _____ of the local governing body of the City of Durham as attested to by the signature of Clerk of said governing body on _____ (Date)

This Agreement has been pre-audited in the manner required by the Local Government Budget and Fiscal Control Act.

(SEAL)

BY: _____
(FINANCE OFFICER)

Federal Tax Identification Number

Remittance Address:
City of Durham

DEPARTMENT OF TRANSPORTATION

BY: _____
(CHIEF ENGINEER)

DATE: _____

APPROVED BY BOARD OF TRANSPORTATION ITEM O: _____ (Date)